

### **Remarks**

Applicants have canceled claims 1-21 without prejudice or disclaimer. New claims 22-41 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. New claims 22-41 find support throughout the specification and claims as originally filed, and thus no new matter has been added.

Claims 22-41 are pending.

### ***The Restriction Requirement***

Pursuant to the Office Action mailed April 16, 2004, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I to IX. The Examiner has further required an election under 35 U.S.C. § 121 of a single nucleic acid by sequence identifier. The Examiner contends that the inventions of the Groups are distinct, each from the other.

In order to be fully responsive, Applicants provisionally elect, *with traverse*, the subject matter of Group I, directed to, *inter alia*, polynucleotides. Applicants further provisionally elect polynucleotides encoding SEQ ID NO:2, including but not limited to SEQ ID NO:1, represented by original claims 1-8 (now canceled), and new claims 22-39. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicants point out that claims 1-21 have been cancelled without prejudice or disclaimer, and that new claims 22-39 are directed to subject matter falling within the ambit of Group I as cast by the Examiner.

With respect to the Examiner's restriction of groups directed to a nucleic acid sequence, polypeptides encoded thereby, antibodies recognizing such polypeptides, vaccines, and methods of using the same, Applicants traverse. As the Examiner has recognized, even where patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden". See M.P.E.P. § 803. In the present situation, although the Examiner has argued that Groups I-IX are separately classified or represent divergent subject matter, Applicants nonetheless submit that, with respect to a given sequence, a search of the claims of the groups directed to that sequence would also provide useful information for the claims of the other groups directed to that sequence. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, antibodies to the protein, and methods of making and using the same. Thus, since the searches for proteins, nucleic acids encoding such proteins, antibodies to such proteins, and methods of making and using the same commonly overlap, Applicants respectfully disagree with the Examiner's assertion that the

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combined search and examination of such compositions and methods using the same would entail a serious burden, even assuming *arguendo* that all of the searches were not coextensive.

Accordingly, in view of M.P.E.P. § 803, claims directed to polynucleotides encoding SEQ ID NO:2, the polypeptide encoded thereby, antibodies that specifically bind to such polypeptide, and methods of using the same should be searched and examined in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Further, although not acquiescing to the restriction requirement, Applicants nevertheless note that the Examiner has indicated that the claims of Group I and the claims of Group VI are related as between a product and process for using the product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), if an elected product claim is found allowable, "withdrawn process claims which depend from or otherwise include all of the limitations of the allowable product claim will be rejoined." M.P.E.P. § 821.04. Accordingly, Applicants respectfully request that if any of the claims of Group I (new claims 22-39) are found allowable, then the process claims of Group VI (claims 40-41) should be rejoined and examined for patentability.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

#### *Conclusion*

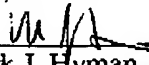
Entry of the above amendment is respectfully solicited. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite the examination of this application.

If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37

C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Dated: May 14, 2004

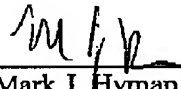
Respectfully submitted,

By   
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CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

1. Fax Cover Sheet
2. Fee Transmittal Sheet
3. Provisional Election Under 37 C.F.R. § 1.143 With Traverse And Amendment Under 37 C.F.R. § 1.111

I hereby certify that the above-listed correspondence is being facsimile transmitted to the United States Patent and Trademark Office on May 14, 2004.

  
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